IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1652 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT
Versus
HARIBHAI @ NAGINBHAI RAMDAS PATEL & ANR

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Appearance :
MR DIPEN A DESAI APP for Appellant

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/11/2007

ORAL JUDGMENT :(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 Instant Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure, against the judgment and order delivered by Presiding Officer, Fast Track Court No.2, Vadodara, in Atrocity Case No. 31 of 2005, whereby both the respondents herein, being accused of the said case, came to be acquitted by the Trial Court, for the charges levelled against them under Section 3(1)(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 as well as under Sections 506(2), 323 and 504 of the Indian Penal Code.

2 Complainant - Rameshbhai Valjibhai Vasava, filed a private complaint, being Complaint No. 60 of 2004, in the Court of Judicial Magistrate, First Class, Karjan, on 30th of December, 2004, against both the respondents, for above said charges, stating that both the respondents are father and son. The complainant Rameshbhai was working as agriculture labourer in the field of accused Nos. 1 and 2 for about last 10 years from the date of the incident. Respondents – accused had not cleared their account and made payment of the whole year. According to the complainant, the respondents were paying Rs. 1,500/- to Rs. 2,000/- per year, and for which, complainant himself and his wife were doing labour work for the accused. However, the respondents were neither settling the account nor making payment nor allowed them to

go for the labour work elsewhere. On 16th of October, 2004, at about 10.00 a.m. Sumitraben, wife of the complainant, had been to the accused for settling of the account. The accused had got excited and had pushed Sumitraben and she was driven out of their house. They also uttered insults about the caste of the complainant and his wife. On the next day, the respondents went to the house of the complainant and threatened complainant and his wife to kill. According to complainant, he had been to the police station i.e. at Outpost, Nareshwar Police Station, but police did not take any steps because the police had hand-in-gloves with the respondents.

3 This complaint being filed, learned Magistrate, forwarded this complaint to the concerned Police Officer for investigation under Section 156(3) of the Code of Criminal Procedure. At the result of the investigation, in pursuance of `M' Case No. 1/2005, a charge sheet came to be submitted against the accused in the Court of Judicial Magistrate, First Class, Karjan. The above Criminal Case thereafter was committed to the Special Court and made over to Fast Track Court No.2 at Vadodara. Vide Exhibit – 10, Trial Court framed charges against the accused and the accused pleaded not guilty to the charges. The Trial Court, therefore, put the accused to the trial. Prosecution examined as many as nine witnesses and produced on record necessary documents. Learned

Trial Judge thereafter recorded the statements of the accused under Section 313 of the Code of Criminal Procedure, wherein after denying the evidence of the prosecution in toto, the accused submitted that they do not intend to lead any defence. After hearing the prosecution as well as the defence, the learned Trial Judge came to the above conclusion of acquitting the accused and, hence, this Appeal by the State.

4 Learned APP Mr. Dipen A Desai, was heard in respect of the Appeal in detail even at this stage.

5 We have gone through the record and proceedings of the Trial Court thoroughly as the record and proceedings are summoned by us from the Trial Court. We have re-appreciated the evidence recorded during the trial and have scrutinized the reasons assigned by the Trial Court for acquittal. We have taken into consideration the contentions raised by the State for admitting the Appeal for consideration.

6 Going through the evidence recorded during the trial, it appears that, Complainant Rameshbhai Valjibhai Vasava, PW-1 examined at Exhibit- 16 stated that they were doing labour work with the accused and he and his wife were paid Rs. 20/- each per day. He

had sent his wife to the accused for collecting the labour charges, but the accused had pushed his wife and his wife was driven out by the accused. On the same day, both the accused had been to his field and had threatened to kill them. Thereafter, he went to the Police Station and had given a complaint. Thereafter, he filed a complaint in the court. He has been cross-examined by defence in detail. PW-2 Sumitraben, examined vide Exhibit-22, wife of the complainant, stated that she was working along with her husband in the field of the accused since last 10 years. They were paid Rs. 20/- per day by the accused. Above this amount, they were given rationing by the accused also. On 16th of October, 2004, she had been to the accused for settling the amount of labour charges and when she demanded the amount, she was pushed by the accused and was beaten. Thea accused uttered insulting words to her case. Next day, accused had been to their house and gave threats to them to kill. She has also been cross-examined by the defence. PW-3 Ramabhai Chhotabhai, examined at Exhibit-23, stated to the extent that he knew complainant and his wife and knew that something was due on account of labour charges to the complainant from the accused. He did not know anything about the dispute. PW-4 Hasmukhbhai Anopbhai Vasava, examined at Exhibit – 24, stated that on 16th of October, 2004, complainant had approached the accused for collecting the labour charges and he was driven out by insulting. On 19th

of October, 2004, accused came to the house of the complainant and had threatened. On 21st of October, 2004, complainant had conveyed this fact to him and, therefore, he had advised complainant to file a complaint. He had been cross-examined by the defence. He was confronted with Exhibit–18, which is a letter of compromise between the parties about labour charges. About this, the witness stated that his signature was obtained on Exhibit–18 by coercion. PW-5 Ramanbhai Bhupendrabhai Vasava, examined at Exhibit – 26, is a panch witness of panchnama Exhibit–27 of scene of offence. He has not supported the prosecution case. PW-6 Manishkumar Dineshkumar Patel, examined at Exhibit–28, is also a panch of panchnama at Exhibit–27 and he also stated that his signature was obtained by the police in ready-made panchnama. PW-7 Mangalbhai Abhesinh, examined at Exhibit-29, stated that he knew complainant and his wife and on 16th of October, 2004, when Sumitraben approached the accused for settling the accounts of labour charges, she was kicked by the accused and was insulted by her caste. On 19th of October, 2004, accused visited the house of the complainant and threatened them to kill. On 21st of October, 2004, he had been to Nareshwar Police Station along with the complainant for giving complaint where one Police Jamadar obtained thumb impression of the complainant on blank paper. He has been cross-examined by the defence. PW-8 Jayantibhai Mansukhbhai,

examined at Exhibit 31, was the then PSO of Karjan Police Station, who recorded the complaint by `M' Case No. 1/2005 and the investigation was handed over to PW-9 Bhimsinh Sursinh Vasava, Dy. S.P. PW-9, Exhibit-40, Bhimsinh Sursinh Vasva, was concerned Dy. S.P. , Vadodara, and he investigated the offence and submitted charge sheet.

7 This is all is the evidence of the prosecution.

8 From re-appreciation, it clearly emerges that the complaint of the incident came to be filed by the complainant late by about two months, for which, no explanation is offered. Even there is no evidence that the complainant attempted to file complaint before the police and the police did not respond the complainant. Further, we found contradictions in the evidence of the complainant and complaint. In complaint it is clearly stated that the accused were paying labour charges of Rs. 1500 to 2000 per year while complainant stated before the court that they were paid Rs. 20/- daily. In examination-in-cross, the complainant admitted that he had four buffaloes. Now, if the complainant was able to maintain four buffaloes, then it becomes doubtful that, why he and his wife would go to labour work for Rs. 20/- each per day. About the incident also, there are contradictions in the evidence of the complainant and his wife. The defence has produced

on record, Exhibits, 19, 20 and 21. These are receipts passed by the complainant for the labour charges of the complainant. It is the defence case that the complainant had compromised the matter with the accused about the labour charges before police, for which document Exhibit–18 is produced. In addition to that, a compromise between the complainant and the accused had also taken place in the presence of Labour Commissioner and the evidence of which is produced in shape of Exhibits 19 and 20. Though the complainant and his wife stated to the extent to take a stand that their signatures were taken by coercion. This fact cannot be believed as the compromise had taken place in the presence of the Labour Commissioner. In those circumstances, for the say of the complainant, we have the evidence of complainant and his wife only, who are interested witnesses, and in the facts and circumstances, it certainly needs independent corroboration, which was not found from the prosecution case. The other witnesses examined are hear-say witnesses, to whom the complainant had conveyed the facts about the incident and they are not the eye witnesses. In this view of the matter, it clearly appears that, the prosecution was not able to prove its case beyond reasonable doubt. The Trial Court appreciated this evidence properly and came to the correct conclusion. The view taken by the Trial Court is possible and plausible view from the evidence recorded during the trial. While re-appreciating the evidence, we also come to the same

conclusion that the prosecution failed to prove its case beyond reasonable doubt. This being appeal against the acquittal, unless the reasoning of the Trial Court is found perverse, palpably wrong, demonstrably unsustainable and manifestly erroneous, no interference is permitted in the orders of acquittal of the Trial Court. As discussed above, the Trial Court has taken into consideration all relevant aspects of the prosecution case and the evidence is appreciated in its proper perspective. In this view of the matter, by no stretch of imagination, it could be said that the conclusion arrived at by the Trial Court of the acquittal of the accused is perverse, so as to be interfered with in this Appeal. In the result, for the aforesaid discussion, we come to the conclusion that, even at this stage, there is no prima facie case of the appellant to get the Appeal Admitted for consideration, though we have scanned the whole case in detail.

9 For the above said reasons, Leave to Appeal refused. Appeal stands dismissed.

(J. R. VORA, J.)

(M. R. SHAH, J.)

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